

This correspondence is written in light of CTIA - The Wireless Association (CTIA) seeking a declaratory ruling clarifying provisions of the Communications Act of 1934, as amended, regarding state and local review of wireless facility siting applications. On behalf of the Connecticut Siting Council (Council), an executive-branch agency of Connecticut state government, the undersigned wish to respectfully submit the following comments in opposition to this proposal.

Specifically, CTIA asks the Commission to take four actions:

1. Eliminate the ambiguity of a timely decision suggesting "(1) a failure to act on a wireless facility siting application only involving collocation occurs if there is no final action within 45 days from submission of the request to the local zoning authority; and (2) a failure to act on any other wireless siting facility application occurs if there is no final action within 75 days from submission of the request to the local zoning authority."

2. Implement procedural steps, consistent with Section 332(c)(7)(B)(ii) of the Communications Act, that state and local governments act on wireless facility siting applications within a reasonable time, whereby, if a zoning authority fails to act within the above time frames, the application shall be "deemed granted." Alternatively, CTIA asks the Commission to establish a presumption that entitles an applicant to a court-ordered injunction granting the application unless the zoning authority can justify the delay.

3. Clarify that Section 332(c)(7)(B)(i)(II), which forbids state and local decisions that "prohibit or have the effect of prohibiting the provision of personal wireless services," bars zoning decisions that have the effect of preventing a specific provider from providing service to a location on the basis of another provider's presence there.

4. That the Commission preempt, under Section 253 of the Communications Act, local ordinances and state laws that automatically require a wireless service provider to obtain a variance before siting facilities.

The Connecticut legislature has charged this agency (rather than the state's local municipalities) with authority to regulate the placement, construction, and modification of personal wireless service facilities. Facilities "operating within a cellular system" are among such facilities. Thus, in the State of Connecticut persons seeking to develop new wireless (cellular) facilities, as referenced by the subject CTIA, are under this agency's jurisdiction rather than the more local jurisdiction of our state's 169 cities and towns. (Of note, Conn. Gen. Stat. § 16-50p(a) provides that the Council must render its decision in such matters within 180 days after the filing of an application to a wireless telecommunications facility (tower), a period that may be extended not more than 180 days, and only with the consent of the applicant.)

Rarely, if ever, has the industry expressed dissatisfaction with the Council's schedule for review and adjudication process in these matters and no legislation to otherwise alter this process has been proposed by the industry. Indeed, Connecticut's model for review of these matters is acknowledged by the industry and municipalities alike as having several advantages. Nevertheless, given that all such applications must come before our agency we naturally receive a sizeable number of such applications each year. Over the last five years alone the Council

reviewed and acted on more than 90 applications to build new towers and over 800 applications related to tower sharing. The Council denied eight proposals.

This high volume of work has enabled our agency to develop significant subject-matter expertise in the specialized field of wireless communications. We employ several full-time siting analysts with expertise in environmental sciences, land use planning, and siting matters. This means that the Council is an experienced board that is well equipped to reach reasoned, thoughtful decisions that achieve the often difficult goal of balancing the often competing concerns that are inherent to the siting process.

Still, our review of such applications takes some time. As your agency itself knows important decisions affecting the rights of individuals must be adjudicated in a transparent manner that is respectful of the need for notice, due process, and careful deliberation. This is especially true of any agency whose jurisdiction is preemptive and multi-faceted. (Please note that while our agency's jurisdiction exists at the state level and is thus preemptive of some 169 municipalities, we are also charged with siting jurisdiction in areas related to energy infrastructure, hazardous waste, and other areas of public interest and concern.) As a practical matter most applications to approve a tower-sharing request are processed by our agency in four to six weeks. Applications to approve a new-build tower are generally reviewed and acted upon in four to five months given that such applications require a public hearing.

Public hearings, if they are to be meaningful, naturally require significant notice to the affected community in order that persons may be permitted the opportunity to make plans to be in attendance. In any event, the wireless telecommunications industry in Connecticut has come to anticipate, accept, and understand that our agency's review and

adjudication of such matters takes a predictable period of time; as such they have learned to properly schedule their filings in order to facilitate these schedules with no particular hardship to their business. Simply put, while the 45-day and 75-day timelines proposed by CTIA may or may not make sense for jurisdictions that operate at the most local levels of government, such timelines are simply unworkable for an agency with statewide jurisdiction that literally receives dozens of applications each month.

In summary the largely self-serving proposal by CTIA to effectively fast-track siting decisions for wireless telecommunications facilities is highly problematic. It seeks to assign a nationwide remedy where, as the above information demonstrates, no nationwide problem exists. Worse, if enacted as proposed the timelines would effectively vitiate a review process in the State of Connecticut that ably balances local concerns with national policies and federal law. For these reasons we urge that the petition submitted by CTIA - The Wireless Association be denied. Thank you for your consideration.

Very respectfully,

Daniel F. Caruso
Phelps

S. Derek

Chairman
Executive Director

SDP/FOC/laf

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c: Connecticut Attorney General Richard Blumenthal

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